

**Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Rules to Remove Obsolete References**

January 31, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 27, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to remove obsolete references to the Board of Governors and constitution of the Exchange. The proposed rule change is available on the Exchange’s website at [www.nyse.com](https://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to remove obsolete references to the Board of Governors and constitution of the Exchange. In 2005 the Exchange's ownership structure was demutualized.<sup>4</sup> As part of that change, a Board of Directors replaced the Board of Governors as the governing body of the Exchange.<sup>5</sup> The Exchange filed an updated certificate of incorporation and bylaws and ceased having a constitution.<sup>6</sup>

Although most references in the Exchange rules to the Board of Governors and constitution were removed or updated at the time of the demutualization, some obsolete references remain.<sup>7</sup> To update those obsolete references, the Exchange proposes to make the following non-substantive changes.

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<sup>4</sup> See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) (Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the Chicago Stock Exchange, Inc. Relating to the Demutualization of the Chicago Stock Exchange, Inc.).

<sup>5</sup> See Section Fifth of Exhibit A to Amendment 1, SR-CHX-2004-26 (November 24, 2004), available at <https://www.sec.gov/rules/sro/chx/34-50892exa.pdf> (stating that “[t]he governing body of the Corporation shall be its Board of Directors”). See also Securities Exchange Act Release No. 50892 (December 20, 2004), 69 FR 77796 (December 28, 2004) (SR-CHX-2004-26) (Notice of Filing of Amendment 1) and 70 FR 7531, *supra* note 4, at 7531 (“CHX will have its own Board of Directors that will manage CHX's business and affairs”) & 7534 (description of Board of Directors).

<sup>6</sup> See Exhibit A and Exhibit B to Amendment 1, SR-CHX-2004-26 (November 24, 2004), available at <https://www.sec.gov/rules/sro/chx/34-50892exa.pdf> and <https://www.sec.gov/rules/sro/chx/34-50892exb.pdf> (removing all references to the “Constitution” by either replacing them with references to the “bylaws” or deleting them). See also 69 FR 77796, *supra* note 5. The current governing documents of the Exchange are the Second Amended and Restated Certification of Incorporation of NYSE Chicago, Inc., available at [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_Chicago\\_Second\\_Amended\\_and\\_Restated\\_Certificate\\_of\\_Incorporation.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Certificate_of_Incorporation.pdf), and Second Amended and Restated By-laws of NYSE Chicago, Inc., available at [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_Chicago\\_Second\\_Amended\\_and\\_Restated\\_Bylaws.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Bylaws.pdf).

<sup>7</sup> See Exhibit E to Amendment 1, SR-CHX-2004-26 (November 24, 2004), available at <https://www.sec.gov/rules/sro/chx/34-50892exe.pdf>. See also 69 FR 77796, *supra* note 5.

- References to the “Board of Governors” would be revised to refer to the “Board of Directors” instead. Accordingly, the Exchange proposes to replace “Governors” with “Directors” in Article 13, Rule 4(d) (Procedure for Reinstatement), and Article 22, Rule 2 (Admittance to Listing), Rule 3 (Suspension of Securities), Rule 5 (Unlisted Trading Privileges), Rule 21 (Corporate Governance, Disclosure, and Miscellaneous Requirements), Rule 25 (Portfolio Depositary Receipts), and Rule 27 (Trust Issued Receipts).
- The text “and Article VII of the Exchange Constitution” would be deleted from Article 12, Rule 8 (Minor Rule Variations). Because there is no reference to “disciplinary proceeding” in the Second Amended and Restated By-laws of NYSE Chicago, Inc. (“By-laws”), the Exchange would not replace the reference with one to the Bylaws.
- In Article 22, Rule 25(b) and Rule 27(e), “Constitution” would be replaced with “bylaws”.
- In Article 22, Rule 25(g), the text “in the Exchange’s Constitution or” would be deleted. Because there is no limitation of liability in the Bylaws, the Exchange would not replace the reference with one to the Bylaws.

Finally, the Exchange proposes to amend Article 22, Rule 5, to (a) delete the redundant text “by the Exchange” and (b) add “or her” after “his.” Neither change is substantive.

The proposed rule change is a non-substantive change that does not impact the governance of the Exchange. The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Exchange Act<sup>8</sup> in general, and with Section 6(b)(5) of the Exchange Act<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed non-substantive changes updating obsolete references would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. It would do so by removing obsolete references to the Board of Governors and constitution and either updating them with references to the Board of Directors and By-laws, respectively, or, in the case of the constitution, deleting the reference. In addition, with respect to Article 22, Rule 5, it would do so by making a non-substantive deletion of redundant text and revising "his" to read "his or her."

By making the changes, the Exchange would ensure that its rules are consistent with the existing corporate structure and governing documents, including the By-laws. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange believes that the proposed

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. The proposed rule change is not intended to address competitive issues but is rather concerned with making non-substantive changes to update obsolete references in the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange or put any market participants at a relative disadvantage compared to other market participants, the proposed changes will not impose any burden on competition.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2022-01 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-NYSECHX-2022-01 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).